

**Summary:** The Government moved to limit the Defendant's garnishment hearing, or in the alternative, to quash the hearing. The Court granted the motion to limit the garnishment hearing, finding that the hearing should be limited to (1) the probable validity of any claim of exemption by the judgment debtor and (2) compliance with any statutory requirement for the issuance of the post-judgment remedy granted. The Court denied the motion to quash.

**Case Name:** USA v. Elaine Incognito

**Case Number:** 1-06-cr-82

**Docket Number:** 179

**Date Filed:** 6/4/08

**Nature of Suit:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

United States of America,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING MOTION TO LIMIT</b>
	)	<b>GARNISHMENT HEARING</b>
vs.	)	
	)	
Elaine Incognito,	)	Case No. 1:06-cr-082-03
	)	
Defendant.	)	

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Before the Court is the Government's "Motion to Limit Garnishment Hearing or, in the Alternative, Motion to Quash Garnishment Hearing" filed on June 2, 2008. See Docket No. 177. The Government requests that the garnishment hearing be limited to the following issues: (1) the probable validity of any exemptions claimed by the Defendant and (2) compliance with statutory requirements for issuance of the writ of continuing garnishment granted in the case. In the alternative, the Government requests that the Court quash the request for a hearing and issue a disposition order pursuant to 28 U.S.C. § 3205(c)(7).

On February 8, 2008, a writ of continuing garnishment was issued to the defendant, Elaine

Incognito. See Docket No. 157. Incognito was served with the writ on February 12, 2008. On February 14, 2008, Incognito filed a claim for exemptions and requested a hearing. See Docket Nos. 159 and 160. A hearing is scheduled for June 16, 2008.

Section 3205 of the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001, et seq., provides that the debtor in a garnishment action may request a hearing. However, the issues considered in the hearing are limited by statute as follows:

By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. . . . The issues at such hearing shall be limited—

(1) to the probable validity of any claim of exemption by the judgment debtor;

(2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and

(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

(A) the probable validity of the claim for the debt which is merged in the judgment; and

(B) the existence of good cause for setting aside such judgment.

28 U.S.C. § 3202(d). See United States v. Smith, 88 Fed. Appx. 981, 2004 WL 414822 at \*1 (8th Cir. 2004) (citing 28 U.S.C. § 3202(d) and noting that issues at a garnishment hearing are “limited to determining validity of any claim of exemption, government’s compliance with statutory requirements, and validity of default judgments.”).

In this case, the Government seeks to enforce a criminal judgment in which the Court ordered Incognito to pay restitution. The Government contends that Incognito's challenges to the garnishment should be limited to the following two issues set forth in 28 U.S.C. § 3202(d):

- (1) to the probable validity of any claim of exemption by the judgment debtor;<sup>1</sup>
- (2) to compliance with any statutory requirement for the issuance of the post-judgment remedy granted.

See United States v. Furkin, 1998 WL 846873 at \*4 (7th Cir. Nov. 24, 1998) (holding that a "hearing under the FDCPA is limited to the determination of whether the property is subject to a valid claim of exemption, whether the government complied with the statutory requirements for the issuance of a writ, and, if the judgment was by default, whether there exists good cause for setting aside the judgment."). Further, it is well-settled that a defendant may not challenge the validity of the underlying conviction or the restitution obligation during a garnishment hearing. See United States v. Pugh, 75 Fed. Appx. 546, 2003 WL 22048360 at \*1 (8th Cir. 2003); United States v. Taylor, 2007 WL 87746 at \*2 (W.D.N.C. Jan. 9, 2007).

The Court **GRANTS** the Government's motion to limit the garnishment hearing (Docket No. 177). The garnishment hearing shall be limited to the following issues:

- 1) the probable validity of any claim of exemption by the judgment debtor; and
- 2) compliance with any statutory requirement for the issuance of the post-judgment remedy granted.

The Court **DENIES** the Government's motion to quash the garnishment hearing (Docket No. 177).

**IT IS SO ORDERED.**

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<sup>1</sup> The exemptions available to a criminal defendant are limited to those set out in 18 U.S.C. § 3613(a)(1). See 18 U.S.C. § 3613(a), (f).

Dated this 4th day of June, 2008.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court